

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 169

July 10, 1997, 6:32 pm
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DEFENSE AUTHORIZATION/Federal Prison Industries

SUBJECT: National Defense Authorization Act for fiscal year 1998 . . . S. 936. Gramm modified substitute amendment No. 794 to the Levin amendment No. 778.

ACTION: AMENDMENT AGREED TO, 62-37

SYNOPSIS: As reported, S. 936, the National Defense Authorization Act for fiscal year 1998, will authorize a total of \$268.2 billion in budget authority for national defense programs (the President requested \$265.6 billion). In real terms, this bill will authorize \$3.3 billion less than was provided in fiscal year (FY) 1997.

The Levin amendment would eliminate the mandatory source status for Federal Prison Industries (FPI). (FPI is a wholly-owned corporation of the Federal Government that makes products using Federal prison labor. The mandatory-source status gives FPI the right to make and sell goods to Federal agencies at market prices when those agencies seek outside contractors. After an agency receives bids and thus establishes a market price for goods or services, FPI is given the right to be the contractor at that price, provided it can also meet timeliness and quality requirements. If an agency believes that FPI cannot meet its delivery, price, or technical requirements, it can request a waiver to seek a different contractor. Waiver requests, on average, are acted upon within 4 days, and an average of 90 percent of waiver requests are approved.) The Levin amendment would allow a noncompetitive contract to be awarded under limited circumstances if the Attorney General personally approved it.

The Gramm modified substitute amendment to the Levin amendment would require the Department of Defense and Federal Prison Industries to conduct a joint study of existing procurement procedures, regulations, and statutes which now govern procurement transactions between the Department of Defense and Federal Prison Industries.

NOTE: After the vote, the Levin amendment, as amended, was adopted by voice vote.

Those favoring the amendment contended:

There are 1.1 million people in State and Federal prisons. Almost all of them are healthy young men in their prime working years.

(See other side)

YEAS (62)			NAYS (37)		NOT VOTING (1)	
Republicans (38 or 69%)		Democrats (24 or 55%)	Republicans (17 or 31%)	Democrats (20 or 45%)	Republicans (0)	Democrats (1)
Ashcroft	Hutchinson	Akaka	Abraham	Baucus		Mikulski- ²
Bennett	Hutchison	Biden	Allard	Boxer		
Bond	Inhofe	Bingaman	D'Amato	Breaux		
Brownback	Jeffords	Byrd	Enzi	Bryan		
Burns	Kyl	Cleland	Faircloth	Bumpers		
Campbell	Lott	Conrad	Frist	Daschle		
Chafee	Mack	Dorgan	Gorton	Dodd		
Coats	McCain	Durbin	Grassley	Ford		
Cochran	McConnell	Feingold	Helms	Glenn		
Collins	Murkowski	Feinstein	Kempthorne	Inouye		
Coverdell	Nickles	Graham	Lugar	Kerry		
Craig	Roberts	Harkin	Sessions	Lautenberg		
DeWine	Roth	Hollings	Shelby	Levin		
Domenici	Santorum	Johnson	Smith, Bob	Lieberman		
Gramm	Snowe	Kennedy	Smith, Gordon	Moseley-Braun		
Grams	Specter	Kerrey	Thomas	Moynihan		
Gregg	Stevens	Kohl	Warner	Reed		
Hagel	Thompson	Landrieu		Reid		
Hatch	Thurmond	Leahy		Robb		
		Murray		Wellstone		
		Rockefeller				
		Sarbanes				
		Torricelli				
		Wyden				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

A large percentage of them are not working because of Federal laws that were passed in the Great Depression that make it illegal in almost all cases to sell prison goods and services to the general public. Because of those laws, Federal prisoners sit idly all day long in air-conditioned penitentiaries watching color television, at an annual per-convict cost of \$21,000. For Federal prisoners, one other option exists, which is to make goods and services for sale to the Federal Government. Those sales yield enormous benefits for America. First, inmates who work have much lower recidivism rates. Once they are out of prison, they are two to three times as likely to stay out as people who did not work while in prison. Second, the money they earn is used to pay fines and victims' restitution. Without any income, such fines and restitution are never paid. Third, keeping them busy in prison keeps them out of trouble. Prisoners who work are much less likely to cause damage or harm guards or other prisoners. Fourth, making them work serves justice--criminals should be made to work as atonement for their crimes.

Before the Great Depression, America had a model prison system that was the envy of the world. Prisoners typically worked 12 to 16 hours per day in prisons that were more humane than their foreign counterparts in which no one worked and in which treatment was often cruel. Then, during the Depression, laws were enacted to stop the sale of products and services by prisoners because private businesses did not like the competition. The only customer left for prison products was the Federal Government. Now some businesses are out to get rid of this last vestige of prison labor in America. Goods made by Federal Prison Industries (FPI) are bought without competitive bidding. Businesses want to require competitive bidding, and they say they only want it in the interests of competition. However, if they were really interested in competition, they would also be advocating the repeal of all of the other laws that keep FPI from competing with them in the private sector. Their excuse for wanting to retain those laws is that inmates are paid low wages, so prisons have an unfair advantage; true enough, but businesses have their own enormous unfair advantages over prison labor, including that they do not try to structure their businesses to employ as many people as possible, despite inefficiencies (prisons do so to keep prisoners occupied and thus out of trouble), businesses do not have to have armed guards watching their employees, and businesses do not have workforces comprised of mostly drug addicts who have never held fulltime jobs and who are roughly only one-fourth as productive as other workers. Their largest unfair advantage, of course, is that they are not restricted to just one customer; businesses can compete in the free market; prisons may not.

Our colleagues make the very valid point that prison contracts end up costing an average of 13 percent more than other contracts. They conclude, correctly, that private firms could win these contracts if bidding were allowed. If this were a simple free-market issue, we would be with them in trying to see that these products went to the best bidder each time, but it obviously is not because prisons are not in the free market, and, even if they were, it would make more sense to put up with some inefficiencies in order to make inmates work. The goals of prison work are not simply to be competitive; they are to compensate victims, rehabilitate criminals, and improve the safety of prisons. The prison system and victims rights groups are strongly against the Levin amendment because of these reasons; business groups are supportive of the Levin amendment because of greed. We are not willing to wipe out the last vestige of our once great prison work system. We thus strongly support the Gramm amendment.

Those opposing the amendment contended:

The Levin amendment would require Federal Prison Industries (FPI) to compete for the Federal contracts it is awarded. FPI produces products with prison labor. It pays inmates 23 cents to \$1.15 per hour and it does not provide any benefits. With these huge unfair advantages, it should be able to win contracts fairly. As matters currently stand, though, it does not have to because it is awarded contracts without competition. As a result, it has no incentive to produce a superior product, on time, and at low cost. Thus, we hear from the Defense Department Inspector General that FPI contracts for defense are 13 percent more expensive than they would be if they were filled by the private sector, and we hear from the Defense Logistics Agency that more than 40 percent of its FPI contracts are delinquent, compared to a 6-percent rate for private contractors. We approve of prison labor for its numerous side benefits, including its rehabilitative value, but we sharply dispute that it cannot be competitive; it has built in advantages, and the only reason it is so expensive is that it is given monopoly control over contracts. In our opinion, its advantages are so great that really the best solution would be to require it to produce products that are primarily imported. That way, when it drove competitors out of business, they would be foreign competitors. The Chamber of Commerce, the National Federation of Independent Business, the National Association of Manufacturers, and hundreds of small businesses have all expressed strong support for the underlying Levin amendment, which the Gramm amendment would gut. Business groups support the Levin amendment because time and again their members have lost contracts to the Federal Government, the largest customer in the country, to Federal Prison Industries (FPI). They have lost those contracts despite the fact that they have submitted lower bids, and despite the fact that the Federal Government agencies awarding those contracts knew full well that the work by FPI is frequently of low quality and delivered late. This issue is one of basic economic fairness. Do our colleagues believe in competition or not? We do, and thus urge our colleagues not to vote for the Gramm amendment, which would gut the underlying amendment.